

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

No. 18-CV-01119-RB-LF

**AFSCME COUNCIL 18; MICHELLE LUJAN
GRISHAM, in her official capacity as
Governor of New Mexico; and HECTOR
BALDERAS, in his official capacity as Attorney
General of New Mexico,**

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF UNION
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7.8, Defendant AFSCME Local 18 advises the Court that, on October 7, 2019, the Supreme Court of the United States denied certiorari in *Miller v. Inslee*, No. 18-1492. *See* Supreme Court of the United States, Order List (Oct. 7, 2019), at 17 (Exhibit A, hereto). The Order is relevant to the pending cross-motions before this Court because the Supreme Court has now thrice denied review of decisions upholding exclusive representation as consistent with *Janus v. AFSCME Council 31*, 138 S.Ct. 2448 (2018).¹

¹ *See also* Dkt. 45, at 11 (citing denials of certiorari in *Bierman v. Walz*, 139 S.Ct. 2043 (2019), and *Uradnik v. Inter Faculty Org.*, 139 S.Ct. 1618 (2019)).

Specifically, the Order is relevant because the Supreme Court declined to review the Ninth Circuit’s holding that *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984) foreclosed the plaintiff’s First Amendment challenge to a union’s designation as the exclusive representative for the plaintiff’s bargaining unit of public employees. *Mentele v. Inslee*, 916 F.3d 783, 788 (9th Cir. 2019).² Here, Defendant has argued that *Knight* forecloses Hendrickson’s challenge to New Mexico’s recognition of Defendant as the exclusive collective bargaining representative for Plaintiff’s unit. *See* Dkt. 32, at 21-25; Dkt. 39, at 19-21; Dkt. 45, at 11-12 & n.4. Furthermore, the Order is relevant because the Ninth Circuit also held that *Janus* did not abrogate or overrule *Knight*, and, to the contrary, *Janus* “expressly affirm[ed] the propriety of mandatory union representation.” 916 F.3d at 788. Defendant has made the same arguments here with respect to Plaintiff’s challenge to New Mexico’s system of exclusive representation, which relies almost exclusively on *Janus*. *See* Dkt. 32, at 25; Dkt. 39 at 21 & n.9; Dkt. 45 at 11.

Dated: October 7, 2019

Respectfully submitted,

/s/ Eileen B. Goldsmith

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² The case was originally filed on behalf of two plaintiffs, Miller and Mentele, and the district court and 9th Circuit opinions are reported under the name *Mentele v. Inslee*. Only Miller appealed. Hence, the Supreme Court’s Order lists the case as *Miller v. Inslee*.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the CM/ECF system this 7th day of October, 2019, on all registered parties.

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